

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 98
PENSION FUND on behalf of itself and all
others similarly situated,

Plaintiff,

vs.

DELOITTE & TOUCHE, LLP;
DELOITTE LLP,

Defendants.

Case No. 3:19-cv-3304

CLASS ACTION

**DECLARATION OF TODD NEILSON IN SUPPORT OF
SUPPLEMENTAL MOTION FOR CLASS CERTIFICATION, APPOINTMENT OF
CLASS REPRESENTATIVE, AND APPOINTMENT OF CLASS COUNSEL**

I, Todd Neilson, declare as follows:

1. I am a Trustee of the International Brotherhood of Electrical Workers Local 98 Pension Fund (“Lead Plaintiff” or “Local 98 Pension Fund”).

2. I make this declaration in support of Local 98 Pension Fund’s Supplemental Motion for Class Certification, Appointment of Class Representative, and Appointment of Class Counsel. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

3. The International Brotherhood of Electrical Workers Local 98 (“Local 98 Union”) and the Local 98 Pension Fund are two distinct legal and corporate entities with different governance structures.

4. The Local 98 Union is a labor union that represents electrical workers in the city of Philadelphia and certain surrounding counties.

5. The Local 98 Pension Fund, the entity that is serving as the Court-appointed Lead Plaintiff here, is a Taft-Hartley defined-benefit plan, also known as a multiemployer pension plan (“Taft-Hartley plan”). Like all Taft-Hartley plans, it is created by collective bargaining agreements with multiple employers in the same sector; in this case, the electrical and energy sector. The various employers pay into the common Taft-Hartley plan and workers can receive the benefits upon retirement. Like all Taft-Hartley plans, the Local 98 Pension Fund is governed by Employee Retirement Income Security Act (“ERISA”) and subject to the Department of Labor’s jurisdiction. Pursuant to 29 U.S.C. § 1132(a)(2), the Department of Labor can file a complaint to enjoin acts and practices that constitute a breach of fiduciary duty, including removal of a fiduciary. *See also* 29 U.S.C. § 1109(a).

6. Like all Taft-Hartley plans, the Local 98 Pension Fund is administered by a Board of Trustees comprised of both management and employee representatives. The Local 98 Pension Fund has eight seats: four management representatives and three employee representatives (with one employee seat currently open). The management representatives are members of the National Electrical Contractors Association Penn-Del Chapter. They are Gerald Rothstein, Charles MacDonald, Ttarom Moore and Jeff Scarpello. The employee representatives include me, Brian Burrows and Michael Mascuilli. Pursuant to Section 3.15 of the Local 98 Pension Plan Trust Plan, the Board of Trustees is authorized to take action to remove any Trustee via majority vote in the event that a Trustee violates ERISA.

7. The Court has requested additional information regarding Case No. 2:19-cr-000064-JLS in the Eastern District of Pennsylvania (the “Indictment”) and Case No. 2:21-cv-00096-GAM (the “Labor Case”). The Indictment involves criminal allegations against certain individuals for conduct that allegedly occurred in their employment with leadership of the Local

98 Union. The Labor Case is a civil matter brought by the Department of Labor involving allegations regarding how Local 98 Union ran elections for union officers. The court granted in part Local 98 Union's motion to dismiss that matter. *See* No. 2:21-cv-00096-GAM, ECF No. 12. The Local 98 Pension Fund is not a defendant, and is not even mentioned in the Indictment or the Labor Case. Count Forty-Two of the Indictment is a cause of action with regard to an employee benefit plan; the employee benefit plan that is being referred to is an apprentice training fund. *See id.* ECF No. 1 at 74 ¶ 2. That apprentice training program is a project of Local 98 Union, not Local 98 Pension Fund. *See id.* at 1 ¶ 1. Local 98 Pension Fund has not even received a subpoena with respect to the Indictment or related investigation or with respect to the Labor Case.

8. The Indictment names Brian Burrows as a defendant. Mr. Burrows is President of the Local 98 Union. By virtue of that role, he also automatically serves as a Trustee / Board Chair of the Local 98 Pension Fund.

9. As discussed above, Mr. Burrows is just one of seven current members of the Local 98 Pension Fund Board.

10. The Local 98 Pension Fund Board of Trustees is aware of the Indictment and Labor Case and has not taken any action to remove Mr. Burrows from his role.

11. The Department of Labor is also aware of the Indictment and Labor Case and has not taken any action to remove Mr. Burrows from his role.

12. As required by the Private Securities Litigation Reform Act and its fiduciary duties to the putative class in the above-captioned matter, the Local 98 Pension Fund has actively overseen this litigation and counsel. Local 98 Pension Fund is very proud of the success to date: drafting a comprehensive complaint in a complex matter, wholly prevailing on motion to dismiss, filing a compelling class certification motion, and commencing discovery. Local 98 Pension Fund

looks forward to continued vigorous litigation on behalf of the putative class and, hopefully soon, a certified class.

13. In deference to the Court's concerns and to ensure that the case can continue proceeding smoothly with a minimum of distractions, the sole authority to make all decisions with regard to this action on behalf of the Local 98 Pension Fund has been delegated to me. Mr. Burrows will have no role in overseeing this litigation, its resolution or distribution of any settlement proceeds or judgment, if any. I have prepared a new certification, attached hereto as Exhibit A.

14. I respectfully request the Court's acceptance of this certification and maintenance of Local 98 Pension Fund as the sole Lead Plaintiff in this action.

15. Should the Court have any additional questions, I am available to answer them.

Executed on this 29th day of June, 2021, in Philadelphia, Pennsylvania

/s/



Todd Neilson

Exhibit A

**UPDATED CERTIFICATION PURSUANT TO
FEDERAL SECURITIES LAWS**

IBEW Local 98 Pension Fund ("IBEW Local 98") declares as to the claims asserted under the federal securities laws, that:

1. I, Todd Neilson, Trustee of IBEW Local 98, am the sole individual authorized to make legal decisions on behalf of IBEW Local 98 with regard to this action.
2. IBEW Local 98 did not purchase the security that is the subject of this action at the direction of counsel or in order to participate in any private action arising under the Securities Act of 1933 (the "Securities Act") or the Securities Exchange Act of 1934 (the "Exchange Act").
3. IBEW Local 98 is the Court-appointed Lead Plaintiff in this action and will serve as a representative party on behalf of the Class (as defined in the Complaint), including providing testimony at deposition and trial, if necessary.
4. During the Class Period (as defined in the Consolidated Complaint), IBEW Local 98 purchased and/or sold the securities that are the subject of the Consolidated Complaint as set forth on the attached Schedule A.
5. IBEW Local 98 has full power and authority to bring suit to recover for its investment losses.
6. IBEW Local 98 has fully reviewed the facts and allegations of the Consolidated Complaint filed in this action.
7. IBEW Local 98 intends to actively monitor and vigorously pursue this action for the benefit of the Class.
8. IBEW Local 98 will strive to provide fair and adequate representation and work directly with Class counsel to obtain the largest recovery for the Class consistent with good faith and meritorious judgment.
9. IBEW Local 98 will not accept any payment for serving as a class representative on behalf of the class beyond its *pro rata* share of any recovery, except such reasonable costs and expenses (including lost wages) relating to the representation of the Class or approved by the court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this ⁴~~29~~ day of June, 2021.

IBEW Local 98 Pension Fund

By: 

Todd Neilson

Trustee, IBEW Local 98